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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. 249

UNION RAILROAD COMPANY, Petitioner,

v.

ROBERT C. IMM, SR., Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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UNION RAILROAD COMPANY, Petitioner,

v.

ROBERT C. IMM, SR., Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Union Railroad Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above case on April 24, 1961.

OPINIONS BELOW

The order of the United States District Court for the Western District of Pennsylvania, which was the subject of the appeal, was not accompanied by an opinion and the case is not reported. The opinion of the United States Court of Appeals for the Third Circuit is reported in —— F2d —— and is appended hereto (appendix A, pp. 11 to 16).

JURISDICTION

The judgment sought to be reviewed was dated and entered April 24, 1961.

The jurisdiction of this court is invoked under the provisions of 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Whether a district court has jurisdiction of an action brought under the Federal Employer's Liability Act if the amount in controversy is less than $10,000.

STATUTES INVOLVED

1. The Act of June 25, 1948, c. 646, 62 Stat. 930; as amended by the Act of July 25, 1958, P.L. 85-554, § 1, 72 Stat. 415; 28 U.S.C. § 1331, which provides:

> "(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs and arises under the Constitution, laws, and treaties of the United States.
>
> (b) Except when express provision therefore is otherwise made in a statute of the United States, or the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any set off or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff."

2. The Act of June 25, 1948, c. 646, 62 Stat. 931; 28 U.S.C. § 1337, which provides:

> "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

3. The Act of April 22, 1908, c. 149, 35 Stat. 65, as amended; The Federal Employer's Liability Act. 45 U.S.C. § 51-60, the provisions of which are set forth in Appendix C, pp. 18 to 23.

STATEMENT OF THE CASE

In an action commenced in July, 1960, the plaintiff sought to recover damages for a sprained ankle and reduced earnings during the time he was recovering therefrom. The complaint did not allege that the amount in controversy exceeded $10,000 and no specific sum was claimed as damages. Jurisdiction was based on the Federal Employer's Liability Act.

By answer, the defendant asserted that the court lacked jurisdiction because the amount actually in controversy was less than $10,000, exclusive of interest and costs, and, at the non-jury trial in the District Court, moved for judgment on the same grounds. The District Court entered judgment for the plaintiff in the sum of $500 and costs, but at the defendant's request, the trial judge made a finding that the amount in controversy at all times was less than $10,000.

The defendant appealed, raising the single issue of the court's jurisdiction. The court below affirmed. (Court of Appeals' Opinion, appendix A, pp. 11 to 16. Court of Appeals' Judgment, appendix B, p. 17).

ARGUMENT

I.

Whether District Courts Have Plenary Jurisdiction of Cases Arising Under the FELA is an Important Question of Federal Law Which Has Not Been, But Should Be, Decided by This Court.

Inasmuch as the Federal Employer's Liability Act specifically creates a right of action, there is no doubt that FELA cases are cases "arising under" federal law. The important question is whether such jurisdiction must be grounded on 28 U.S.C. § 1331, which requires that the amount in controversy exceed $10,000, or whether jurisdiction exists without regard to the amount in controversy, under 28 U.S.C. § 1337, which confers plenary jurisdiction on district courts in civil actions arising under any act of Congress regulating commerce.

This question has never been answered by this court. There are dicta in *O'Donnell v. Elgin, J. & E. R. Co.*, 338 U. S. 384 (1949) and *Moore v. C. & O. R. Co.*, 291 U. S. 205 (1934), but these cases involved claims far in excess of the requisite jurisdictional amount. In *O'Donnell,* the sum demanded was $85,000. In *Moore,* the demand was $77,600 and the verdict was $30,000.

The question is an important one. In many districts, FELA cases comprise a substantial proportion of the total trial docket. These districts are frequently those with the most crowded dockets. It may be fairly estimated that in the Western District of Pennsylvania, out of which this case arises, perhaps as many as 30% to 35% of the total cases are FELA cases. The vast ma-

jority of these cases produce less than $10,000 in settlement or judgment.

Moreover, the holding in this case by necessary implication will be applicable to suits brought under the Jones Act (46 U.S.C. § 688).

Thus, the question involved in this case is whether the great number of cases filed in United States District Courts under the Federal Employer's Liability Act or under the Jones Act, which actually involve less than $10,000, should be decided in state courts.

II.

The Decision of the Court Below that the Federal Employer's Liability Act is an Act of Congress "Regulating Commerce" Within the Meaning of Title 28 USC §1337 is in Conflict With the Applicable Decisions of This Court.

The decision of the court below is in conflict with the applicable decisions of this Court in the following respects:

1. The decision of the court below is inconsistent with the legislative history of the statute, which the Court of Appeals entirely disregarded.

2. The Court of Appeals admittedly gave this jurisdictional statute a liberal, rather than a strict construction.

3. The court below failed to observe the difference in the meaning of the phrase "regulating commerce" as a measure of the Constitution's grant of legislative power to Congress and as a measure of Congress' grant of jurisdiction to the district courts.

Argument.

A. Legislative History.

Section 1337 of title 28 first appeared in the Federal Judicial Code as paragraph 8 of section 24 of the Judicial Revision of 1911 (March 3, 1911, c. 231, § 24, ¶8, 36 Stat. 1092.) The legislative history of the Judicial Revision of 1911 establishes that the 61st Congress did not regard actions brought under the Federal Employer's Liability Act to be suits arising under an act of Congress regulating commerce, within the meaning of that paragraph.

In §24 of the Judicial Code of 1911, Congress attempted to list all of the various provisions of the existing law which conferred jurisdiction on the district courts regardless of jurisdictional amount, yet it omitted all reference to the Federal Employer's Liability Act. (See excerpts from Senate Report No. 388, Part 1, Sixty First Congress, Second Session. Printed in Appendix E, pp. 28 to 35).

This omission cannot be regarded as an inadvertence. These legislators were too keenly aware of the FELA to have thus overlooked it. The first Federal Employer's Liability Act has been enacted by the 59th Congress in 1906. When it was declared unconstitutional by this court. The second Employer's Liability Act was passed by the 60th Congress in 1908. In 1909, when a Circuit Court in Texas gave a restrictive interpretation to the venue requirements as applied to FELA cases, Congress promptly, on April 5, 1910, amended the FELA by adding thereto the venue provisions of §6 (Act of April 5, 1910, c. 143, §1, 36 Stat. 291.)

Practically all of the men who were members of the Congress which enacted the Judicial Revision of 1911

had been members of the Congress the preceding spring when the Act of April 5, 1910, c. 143 was debated and adopted. Between 60% and 70% of them had been members of the 60th Congress which had enacted the second Employer's Liability Act. (See Biographical Directory of the American Congress 1774-1949, United States Government Printing Office, 1950, House Document No. 607).

The Committee reports on the Judicial Revision of 1911 listed all of the existing statutes which the revisors felt were included within the phrase in paragraph 8 of §24, "Acts of Congress regulating commerce". The title list did not include the Act of April 22, 1908, c. 149 § 1, 45 U.S.C. § 51 et seq. 35 Stat. 65 (The Federal Employer's Liability Act) or the Act of April 5, 1910, c. 143 § 1, 36 Stat. 291, 45 U.S.C. § 56 (amending § 6 of the Federal Employer's Liability Act). See Appendix E, pp. 28 to 35.

The omission of these acts shows conclusively that the Congress which first enacted the provisions now contained in §1337 of title 28 did not regard the FELA as an act regulating commerce, within the meaning of that section. To disregard these clear indications of Congressional intent in the interpretation of a jurisdictional statute, as did the court below, is in conflict with the principles stated in *Romero v. International Terminal Operating Co.*, 358 U. S. 354 (1959); *Carroll v. United States*, 354 U. S. 394, 399 (1957); *Commissioner of Internal Revenue v. Acker*, 361 U. S. 87, 94 (1939).

In its brief below, petitioner drew the court's attention to the pertinent legislative history of the act, but, curiously, no mention whatsoever is made of this feature of the case in the Opinion of the Court below.

B. Liberal interpretation of Jurisdictional Statute.

The court below felt constrained to give a broad interpretation to the phrase "regulating commerce" in order to keep such suits within the competence of federal courts regardless of the amount in controversy, because it believed federal courts necessarily become experts in such litigation. The same observation could be made of all suits arising under federal law. The overriding admonition of this Court, however, is that jurisdictional provisions should be given a strict, rather than a liberal interpretation: *Romero v. International Terminal Operating Co.,* supra.; *Carroll v. United States,* supra.; *Shamrock Oil and Gas v. Sheets, et al* 313 U. S. 100 (1941); *Healy v. Ratta,* 292 U. S. 263 (1934).

C. "Constitutional meaning" applied to a Statute.

In support of its decision, the court below cited the two decisions of this Court dealing with the constitutionality of the Federal Employer's Liability Acts: *First Employer's Liability Case,* 207 U. S. 463 (1908) and *Second Employer's Liability Case,* 223 U. S. 1 (1912).

In this, the Court disregarded admonitions of this Court against applying an interpretation in a Constitutional problem woodenly to the same phrase in a jurisdictional statute: *Romero v. International Terminal Operating Co., supra.,* 358 U. S. at 368 et seq.; 1 Moore's Federal Practice, 606 (2d ed).

The provisions of paragraph 8 of section 24 of the Judicial Revision of 1911 and the later reenactment in §1337 of title 28 have been held to justify federal cognizance of suits arising under a wide variety of federal

enactment. These include the Railway Labor Act, Fair Labor Standards Act, Agricultural Marketing Agreement Act of 1947, Agricultural Adjustment Act of 1938, Interstate Commerce Act, Communications Act of 1934, National Labor Relations Act, Shipping Act, Carriage of Goods by Sea Act, Steamboat Inspection Laws, Tennessee Valley Authority Act, United States Warehouse Act, Civil Aeronautics Act of 1938, Labor-Management Relations Act of 1947, Natural Gas Act, and Labor-Management Reporting and Disclosure Act of 1959. The courts have treated this jurisdictional provision as dynamic enough to include later enactments, and perhaps with a broader view of interstate commerce than that held by the members of the 61st Congress. However, all of these statutes have characteristics which are consistent with the original Congressional intent and which distinguishes them from the FELA.

All such acts, like the original Interstate Commerce Acts themselves, and unlike the Federal Employer's Liability Act, are positive laws imposing definite regulatory provisions of some kind on those engaged in commerce. In most of them, there is a federal agency charged specifically with carrying out or supervising compliance with the federal regulation in question. In each of the enactments listed above, Congress has in some way laid down a positive law imposing a duty or proscribing some conduct of one engaged in interstate commerce. The appropriateness of federal jurisdiction is apparent.

Congress has not done this in the FELA. The Federal Employer's Liability Act itself lays down no regulation upon the railroad employer. It merely provides the employee with a right of action to recover for certain

types of injuries and removes certain common law defenses. (Appendix C, pp. 18 to 23).

Congress has traditionally left to the states the adjudication of controversies which involve small amounts, even though they arise under federal law. The Congress which first enacted the provisions now set forth in §1337 of title 28 clearly indicated that it did not consider the FELA to be among the acts of Congress "regulating Commerce" to which reference was made in paragraph 8 of section 24 of the Judicial Revision of 1911. More than fifty years after Congress refused to do so, the court below has decided that the Federal Employer's Liability Act should be added to the list of cases covered by that enactment. This is error in a matter of sufficient importance to call for the issuance of a writ of certiorari.

Respectfully submitted,

ELDER W. MARSHALL,
Counsel for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,501

ROBERT C. IMM, SR.
v.
UNION RAILROAD COMPANY, a corporation,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Argued April 4, 1961

Before GOODRICH, MCLAUGHLIN and HASTIE,
Circuit Judges.

Opinion of the Court

(Filed April 24, 1961)

By GOODRICH, *Circuit Judge.*

This appeal raises the very interesting question whether a suit under the Federal Employers Liability Act can be brought in federal court where the amount involved is less than $10,000. The plaintiff in this case sought damages for a sprained ankle and reduced earnings during the time he was recovering. In a non-jury trial he recovered a judgment for $500. At the defendant's request the trial judge made a finding that the amount in controversy was at all times less than $10,000.

The defendant makes two points. The first has to do with Section 6 of the FELA which provides that: "an action may be brought in a district court of the United States, in the district of the residence of the de-

fendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. . . ." 45 U.S.C.A. § 56.

The railroad contends that this is a venue provision and does not have anything to do with jurisdiction. It was called a venue provision by the Supreme Court in *Baltimore & O. R. Co. v. Kepner*, 314 U.S. 44 (1941). The legislative history furnished us by the appellant's careful research and discussed in the case just cited shows pretty clearly that what Congress had in mind was an amendment to the statute following the decision of *Cound v. Atchison, T. & S. F. R. Co.*, 173 Fed. 527 (W.D. Tex. 1909). The holding of the Court in that case required an injured plaintiff to sue his employer in the state of incorporation, an obvious hardship in some cases. So we agree with the appellant that Section 6 is a venue provision only even though very eminent authority has implied it has wider significance.[1]

The argument then turns to Section 1337 of the Judicial Code, 28 U.S.C. The relevant language follows: "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." Here the railroad argues that the phrase "acts regulating commerce" should be given a narrow meaning limited to statutes where the Congress has laid some positive regulations imposing a duty or prescribing some conduct. It points out that words in the Constitution and a statute do not necessarily carry the same meaning and calls our

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1 Hart & Wechsler, The Federal Courts and The Federal System 730, 731 n. 39 (1953).

attention to Professor Wechsler's language in Federal Jurisdiction and the Revision of the Judicial Code, 13 Law & Contemporary Problems 216, 224-25.[2] We need not disagree with that general proposition but do not see how it affects us here. It is also urged that statutes conferring jurisdiction on federal courts who are, of course, courts of limited jurisdiction, should be narrowly interpreted and such narrow interpretation would lead us to impose the $10,000 requirement for foundation of jurisdiction.

Appellant concedes that very eminent authority has taken a position contrary to its view. Thus Professor Charles Bunn, in the Jurisdiction and Practice of the Courts of the United States 71-2 (1949) says:

> "When the words were used in 1911 'acts regulating commerce' pretty clearly meant 'The Act to Regulate Commerce' . . .
>
> "Whether this was the original meaning or not, recent cases make it clear that it is not the present one. 'Acts regulating commerce' are coming rapidly to mean all acts whose constitutional basis is the commerce clause."[3]

---

2 See also, Romero v. International Terminal Operating Co., 358 U.S. 354, 363-68 (1959); 1 Moore, Federal Practice ¶ 0.60[2] at 606-07 (2d ed. 1953).

3 Among the statutes which have been held to be acts "regulating commerce" under § 1337 and its predecessor are:

> Agricultural Adjustment Act of 1938, 7 U.S.C.A. §§ 1281 et seq., in Mulford v. Smith, 307 U.S. 38 (1939); Antitrust Acts, 15 U.S.C.A. §§1-31, in Parker v. Brown, 317 U.S. 341 (1943); Carriage of Goods by Sea Act, 46 U.S.C.A. §§ 1300 et seq., in The Crispin Co. v. Lykes Bros. Steamship Co., 134

Still later and more specifically he adds:

> "An action by an employee of an interstate railroad against his employer for personal injury incurred in the line of duty depends on (and therefore 'arises under') the Federal Employers Liability Act . . . which is 'an Act regulating commerce.'" *Id.* at 133.

See also, Barron & Holtzoff, Federal Practice and Procedure § 38 (1950); S. Rep. No. 1830, 85th Cong. 2d Sess. (1958), 2 U.S. Code Cong. & Ad. News 3103 (1958) (reporting the 1958 amendments to §§ 1331, 1332 of 28 U.S.C.—federal question and diversity jurisdiction).

F. Supp. 704 (S.D. Tex. 1955); Civil Aeronautics Act, 49 U.S.C.A. §§ 401 et seq. (now 49 U.S.C.A. §§1301 et seq.), in Killian v. Frontier Airlines, Inc., 150 F. Supp. 17 (D. Wyo. 1957); Communications Act of 1934, 47 U.S.C.A. §§ 151 et seq., in Pugach v. Dollinger, 277 F.2d 739 (2d Cir. 1960), *aff'd per curiam*, 29 U.S. Law Week 4247 (Feb. 28, 1961); Fair Labor Standards Act, 29 U.S.C.A. §§ 201 et seq., in Johnson v. Butler Bros., 162 F.2d 87 (8th Cir. 1947); National Labor Relations Act, 29 U.S.C.A. §§ 151 et seq., in Capital Service, Inc. v. NLRB, 347 U.S. 501 (1954); Railway Labor Act, 45 U.S.C.A. §§ 151 et seq., in Fetter v. Southern Pacific Co., 359 U.S. 326 (1959); Shipping Act, 46 U.S.C.A. §§ 801 et seq., in Pa. Motor Truck Ass'n v. Port of Phila. Terminal Ass'n, 183 F. Supp. 910 (E.D. Pa. 1960); Steamboat Inspection Laws, 46 U.S.C.A. § 404, in Bryant v. Rucker, 111 F. Supp. 309 (S.D. Ala. 1953); Tennessee Valley Authority, 16 U.S.C.A. §§ 831-831dd, in Grant v. TVA, 44 F. Supp. 589 (E.D. Tenn. 1941); United States Warehouse Act, 7 U.S.C.A. §§ 241 et seq., in Young & Jones v. Hiawatha Gin & Mfg. Co., 17 F.2d 193 (S.D. Miss. 1927).

That the statute is considered by the Supreme Court to be an act regulating commerce is shown in the discussion in both the employers' liability cases. 207 U.S. 463 (1908); 223 U.S. 1 (1912).

We think that the Federal Employers Liability Act is based on the power of Congress to regulate interstate commerce. If it is not that, there seems to be no basis for such legislation. Nor do we think that a remedial statute of this kind should be so narrowly interpreted as to jurisdiction to oust federal courts of a type of litigation in which they necessarily become expert because they have so much of it. We think that there is jurisdiction in the federal district courts regardless of the amount claimed under the Federal Employers Liability Act and we think such jurisdiction is in furtherance of the purpose of the statute.

The judgment of the district court will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13,501

ROBERT C. IMM, SR.
v.
UNION RAILROAD COMPANY,
a corporation, *Appellant*

Present: GOODRICH, MCLAUGHLIN and HASTIE,
Circuit Judges.

Order

It is HEREBY ORDERED that the Opinion of this Court in the case filed April 24, 1961, be and it hereby is amended by inserting before the last paragraph of the opinion on page 4 the following paragraph:

"All that we are deciding in this case is that a suit under the FELA is based upon a statute which is a regulation of interstate commerce coming under 28 U.S.C. §1337 and that the jurisdictional amount of Section 1331 is not required. The impact of Section 1337 on the Jones Act cases will be considered when the problem presents itself. See *Wade v. Rogala,* 270 F.2d 280 (3d Cir. 1959); *Jordine v. Walling,* 185 F.2d 662 (3d Cir. 1950); *Branic v. Wheeling Steel Corp.,* 152 F.2d 887 (3d Cir. 1945), *cert. denied,* 327 U.S. 801 (1946). In those cases the application of §1337 to the Jones Act was not raised."

BY THE COURT,
GOODRICH
Circuit Judge.

May 11, 1961.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 13,501
ROBERT C. IMM, SR.
vs.
UNION RAILROAD COMPANY,
a corporation,
Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
Present: GOODRICH, MCLAUGHLIN and HASTIE,
Circuit Judges.

Judgment

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed, with costs.

Attest:

IDA O. CRESKOFF
Clerk

April 24, 1961

APPENDIX C

Federal Employer's Liability Act

45 U.S.C. § 51. Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; definition of employees.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and if none, then the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits

of this chapter. (Apr. 22, 1908, ch. 149, § 1, 35 Stat. 65; Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404.)

45 U.S.C. § 52. Carriers in Territories or other possessions of United States.

Every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. (Apr. 22, 1908, ch. 149, § 2, 35 Stat. 65.)

45 U.S.C. § 53. Contributory negligence; diminution of damages.

In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee:

Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. (Apr. 22, 1908, ch. 149, § 3, 35 Stat. 66.)

45 U.S.C. § 54. Assumption of risks of employment.

In any action brought against any common carrier under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. (Apr. 22, 1908, ch. 149, § 4, 35 Stat. 66; Aug. 11, 1939, ch. 685, § 1, 53 Stat. 1404.)

45 U.S.C. § 55. Contract, rule, regulation, or device exempting from liability; set-off.

Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void: *Provided,* That in any action brought against any such common carrier under or by virtue of any provisions of this chapter, such common carrier may set off therein any sum it has contributed or paid any insurance, relief benefit, or indemnity that may have been paid to the in-

jured employee or the person entitled thereto on account of the injury or death for which said action was brought. (Apr. 22, 1908, ch. 149, § 5, 35 Stat. 66).

45 U.S.C. § 56. Actions; limitation; concurrent jurisdiction of courts.

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States. (Apr. 22, 1908, ch. 149, § 6, 35 Stat. 66; Apr. 5, 1910, ch. 143, § 1, 36 Stat. 291; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; Aug. 11, 1939, ch. 685, § 2, 53 Stat. 1404; June 25, 1948, ch. 646, § 18, 62 Stat. 989.) 45 U.S.C. § 57. Who included in term "common carrier."

The term "common carrier" as used in this chapter shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier. (Apr. 22, 1908, ch. 149, § 7, 35 Stat. 66.)

45 U.S.C. § 58. Duty or liability of common carriers and rights of employees under other acts not impaired.

Nothing in this chapter shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other Act or Acts of Congress. (Apr. 22, 1908, ch. 149, § 8, 35 Stat. 66.)

45 U.S.C. § 59. Survival of right of action of person injured.

Any right of action given by this chapter to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury. (Apr. 22, 1908, ch. 149, § 9, as added Apr. 5, 1910, ch. 143, § 2, 36 Stat. 291.)

45 U.S.C. § 60. Penalty for suppression of voluntary information incident to accidents; separability clause.

Any contract, rule, regulation, or device whatsoever, the purpose, intent, or effect of which shall be to prevent employees of any common carrier from furnishing voluntarily information to a person in interest as to the facts incident to the injury or death of any employee, shall be void, and whoever, by threat, intimidation, order, rule, contract, regulation, or device whatsoever, shall attempt to prevent any person from furnishing voluntarily such information to a person in interest, or whoever discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily such information to a person in interest shall, upon conviction thereof, be punished by a fine of not more than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment, for each offense:

Provided, That nothing herein contained shall be construed to void any contract, rule or regulation with respect to any information contained in the files of the carrier, or other privileged or confidential reports.

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Apr. 22, 1908, ch. 149, § 10, as added Aug. 11, 1939, ch. 685, § 3, 53 Stat. 1404.)

APPENDIX D

Appendix in Court of Appeals

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT C. IMM, SR.
v.
UNION RAILROAD COMPANY,
a corporation

Civil Action 60-463

Docket Entries

1960

July 8 Complaint filed.

July 20 Answer filed.

Nov. 17 Non-Jury Trial begun and concluded before J. Wham. Trial memo filed.

Nov. 17 Order entered directing that judgment be entered in favor of the Plff. and against the dft. in the amount of $500.00 and costs. (Wham,J.)

Nov. 18 Pursuant to the above order of court, judgment is hereby entered in favor of Robert C. Imm, Sr. and against the dft. Union Railroad Co. in the amount of $500 and costs. James H. Wallace, Jr., Clerk.

Nov. 23 Motion to Amend for Additional Findings under Rule 52 filed by dft.

Nov. 28 Order entered, written on Motion filed 11-23-60, approving and adopting the additional findings and conclusion. (Wham, J.)

Dec. 14 Notice of appeal filed by dft.

1961

Jan. 10 Original record mailed U.S. Court of Appeals.

Complaint

AND NOW comes the plaintiff above named and for his cause of action against the defendant sets forth as follows:

1. The plaintiff is an individual who resides at 132 Warren Drive, New Kensington, Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania and of the United States of America.

2. The defendant is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania and has a principal place of business in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania, and is a citizen of the Commonwealth of Pennsylvania, United States of America.

3. Jurisdiction of this Honorable Court is conferred by virtue of the Federal Employers' Liability Acts of Congress.

4. At all times pertinent hereto the plaintiff was employed by the defendant corporation as a brakeman in the furtherance of interstate commerce.

5. On or about June 10, 1957, at approximately 12:15 a.m. while the plaintiff was employed by the defendant and in the furtherance of interstate commerce at a place on the defendant corporation property known as Rankin Field, he was caused to sustain a personal injury as a result of the negligence of the defendant corporation while acting as its agent, servant or employee on or about the business of said corporation and under direct control and supervision.

As a result of the injuries, which injuries were caused by the negligence of said defendant, plaintiff was caused to suffer considerable pain, suffering and inconvenience and some injuries to his left ankle.

WHEREFORE, plaintiff claims of the defendant a verdict of judgment and costs.

Respectfully submitted,

McARDLE, HARRINGTON & McLAUGHLIN
DENNIS C. HARRINGTON
Attorney for Plaintiff

Defendant's Answer

* * * * * * *

SECOND DEFENSE

The court lacks jurisdiction because the amount actually in controversy is less than $10,000 exclusive of interest and costs.

* * * * * * *

GILBERT J. HELWIG
REED, SMITH, SHAW & McCLAY
Attorneys for Defendant

Order of Court

AND NOW, to-wit, this 17th day of November, 1960, after hearing testimony in the above named case, it is hereby ORDERED that judgment be entered in favor of the plaintiff and against the defendant in the amount of Five Hundred Dollars ($500) and costs.

FRED L. WHAM

Motion for Additional Findings Under Rule 52

Pursuant to Federal RCP 52 defendant requests that the court make the following findings in the above case:

1. Jurisdiction is claimed by virtue of the Federal Employer's Liability Act (45 USC 51 et seq.). No other basis for this court's jurisdiction is claimed.

2. The injury for which plaintiff sought redress in this action was a sprained ankle, which caused his absence from work for one day, which was followed by a period of reduced earning power of approximately seven weeks. After seven weeks, the plaintiff's disability had no effect upon his earning power, but his injuries resulted in some pain and suffering for an additional period of approximately eleven months. Thereafter, the plaintiff was fully recovered from the effects of his injury.

3. At no time did the plaintiff claim to be entitled to as much as $10,000 on account of the injuries for which redress was sought in this action and he had no reasonable expectation of being awarded as much as $10,000.

4. The amount in controversy in this action is, and at all times, has been, less than $10,000.

(s) GILBERT J. HELWIG

(s) REED, SMITH, SHAW & MCCLAY
Attorneys for Defendant

November 23, 1960

Order

Foregoing findings and conclusions submitted this 28th day of November, 1960 are approved and adopted as additional findings and conclusions of this Court in the above case.

FRED L. WHAM
U. S. Dist. Judge

APPENDIX E

Senate Report No. 388, Part 1, Sixty-first Congress, Second Session, to accompany S 7031, Revision of Laws —Judiciary. Title 28, March 14, 1910.

CALENDAR NO. 372

61ST CONGRESS, *2d Session.* / SENATE / REPT. 388, PART 1.

S. 7031

Revision of Laws—Judiciary Title

MARCH 14, 1910.—Ordered to be printed.

MR. HEYBURN, from the Special Joint Committee on Revision and Codification of the Laws of the United States, submitted the following

REPORT—PART 1.

[To accompany S. 7031.]

The Joint Committee on Revision and Codification of the Laws of the United States submit herewith an explanatory statement of each section contained in Senate Bill 7031.

This bill includes the first 12 chapters of the judiciary title, being title 13 of the Revised Statutes of 1878, with all legislation amending, repealing, or modifying the same. Chapter 13, on habeas corpus, chapter 15, on

injuries, and chapters 20 and 21, on the Court of Claims, are included within this bill.

NOT INCLUDED.

Chapter 14, on district attorneys, marshals, and clerks.

Chapter 16, on fees.

Chapter 17, on evidence.

Chapter 18, on procedure.

Chapter 19, on limitations.

Your committee has thought it best to present the portions of the judiciary title relating to the organization, power, and jurisdiction of the courts first before reporting the chapters relating more particularly to procedure.

The plan of the organization of courts proposed by the bill differs from existing law in that it combines the present jurisdiction of the district and circuit court in the district court and abolishes the present circuit court.

The circuit court of appeals provided for in this bill, while having the same general jurisdictional features as the existing circuit court of appeals, is the court to which appeals lie from the reorganized district courts, and from which appeals lie to the United States Supreme Court within the limitations expressed in the bill.

The changes proposed by the bill are generally in form rather than substance. Where the substance of the law would seem to be changed it is generally because of the reorganization and consolidation of the courts.

The existing law contains a large number of provisions applicable only within the jurisdiction named in the provision. Your committee has endeavored to state

the rule of general application wherever it was possible to do so in the interest of uniformity.

The enumeration of the jurisdiction of each district is based upon existing law. Many changes have been made and many are being made from time to time by the enlargement or change of the jurisdiction of these courts, and these changes will in all probability continue to be made, but the bill reported is based upon the existing statutes. Even since the bill was reported courts of last resort have passed upon some questions of practice and procedure vitally affecting the jurisdiction and the manner of its exercise by the courts and to some extent dealing with the question as to the power of the courts. As these changes are suggested, even during the consideration of this bill, we will ask the Senate to permit such amendments as may conform to the principles that may be so established.

The chapters of the judiciary title that are not included in this bill are of such character that their provisions will necessarily be adapted to the final conclusions of the Senate on this bill, and your committee has thought best to defer reporting them as a part of this bill because of the obvious changes that may be necessary in them because of the action of Congress on this bill.

Your committee has been working continuously upon the judiciary title for more than six months and have given the most careful attention to every section contained in it as well as those that have been omitted from it. Those sections and acts and parts of acts at present upon the statute books that have been omitted from this work have been omitted either because that they have been specifically repealed or passed upon by the courts and declared to be either abolished or in

violation of the Constitution, or because their subject-matter has been transferred and included within provisions outside of the judiciary title or because they no longer have a place on the statute books in view of the consolidation of the jurisdiction of the present circuit and district courts and the reorganization of the circuit court of appeals.

Your committee presents with the bill a report in two parts.

Part 1 contains a succinct reference to every section of the Revised Statutes and every existing statute incorporated either in form or substance into the bill reported stating the status of the law and the reasons for changes where changes have been made.

Part 2 contains the text of the bill as reported with the existing law printed on the page opposite each of the sections referred to. [Emphasis added]

This report is thus divided for convenience during the consideration of the bill.

Your committee hopes to be able to report the remaining chapters of the judiciary title so that they can be considered as amendments to this bill so merged that upon the final action of Congress of all the chapters relating to the judiciary title taken together may constitute a single act.

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[At pp. 10-11]

CHAPTER II.

DISTRICT COURTS—JURISDICTION.

Section 24:

In the various paragraphs of this section have been merged the jurisdiction now vested in both the circuit and the district courts.

Paragraph 1: The jurisdiction of the circuit courts as to suits at common law, or in equity, or on the ground of diverse citizenship, etc., is conferred by the first section of the act of August 13, 1888 (1 Supp., 433), the purpose of which was to correct the mistakes contained in an earlier act. In United States v. Sayward (160 U. S., 493, 498) the Supreme Court construed the language of that section, and proceeded to restate it in its own language. The committee in drafting this paragraph followed the language of the Supreme Court as construed in that case.

With this is merged the jurisdiction of the district courts conferred by the fourth paragraph of section 563, Revised Statutes. Paragraphs 1, 2, and 3, of section 629, were superseded by the act of 1888, above referred to.

At the end of the paragraph the committee has added a clause to the effect that as to the remaining clauses of the section the court shall have jurisdiction without regard to the sum or value of the property in dispute. This is for the purpose of removing all doubt upon the point, and is to meet claims similar to those advanced in Miller-Magee Co. v. Carpenter (34 Fed. Rep., 433) and in Ames v. Hager (36 Fed. Rep., 129).

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[At p. 13]

Paragraph 8: This paragraph declares the jurisdiction of cases arising under the interstate commerce acts now vested in the circuit and district courts.

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REPORT — PART 2

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[At p. 30] SENATE BILL

CHAPTER TWO

DISTRICT COURTS—JURISDICTION

Sec.

24. Original jurisdiction.

Par. 1. Where the United States are plaintiffs; and of civil suits at common law or in equity.

2. Of crimes and offenses.

3. Of admiralty causes, seizures, and prizes.

4. Of suits under any law relating to the slave trade.

5. Of cases under internal revenue, customs, and tonnage laws.

6. Of suits under postal laws.

7. Of suits under the patent, the copyright, and the trademark laws.

8. Of suits for violation of interstate commerce laws.

9. Of penalties and forfeitures.

10. Of suits on debentures.

11. Of suits for injuries on account of acts done under laws of the United States.

12. Of suits concerning civil rights.

Sec.

24. Original jurisdiction—Continued.
    13. Of suits against persons having knowledge of conspiracy, etc.
    14. Of suits to redress the deprivation, under color of law, of civil rights.
    15. Of suits to recover certain offices.
    16. Of suits against national-banking associations.
    17. Of suits by aliens for torts.
    18. Of suits against consuls and vice-consuls.
    19. Of suits and proceedings in bankruptcy.
    20. Of suits against the United States.
    21. Of suits for the unlawful inclosure of public lands.
    22. Of suits under immigration and contract-labor laws.
    23. Of suits against trusts, monopolies, and unlawful combinations.
    24. Of suits concerning allotments of land to Indians.
    25. Of partition suits where United States is joint tenant.
25. Appellate jurisdiction under Chinese-exclusion laws.
26. Appellate jurisdiction over Yellowstone National Park.
27. Jurisdiction of crimes on Indian reservations in South Dakota.

SENATE BILL

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[At p. 30]

SEC. 24. The district courts shall have original jurisdiction as follows:

* * * * * *

[At p. 46]

Eighth. [Of all suits and proceedings arising under any law regulating commerce.] [C. R., 1067. 4 Feb., 1887, 24 Stat. L., 382, c. 104, s. 9; 1 Supp., 530. 2 Mar., 1889, 25 Stat. L., 857, c. 382; 1 Supp., 684. 10 Feb., 1891, 26 Stat. L., 743, c. 128; 1 Supp., 891. 11 Feb., 1893, 27 Stat. L., 443, c. 83; 2 Supp., 80. 8 Feb., 1895, 28 Stat. L., 643, c. 61; 2 Supp., 369.]

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[At p. 47]

EXISTING LAW.

EIGHTH.

CHAP. 104.—An act to regulate commerce.

* * * * * *

Feb. 4, 1887. 24 Stat., 279; 1 Supp., 529.